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In re Application of
Jeffrey J. Lace et al.
Application No.: 09/355436
PCT No.: PCT/US98/02043
Int. Filing Date: 04 February 1998
Priority Date: 07 February 1997
Attorney's Docket No.: 1201.00022
For: Anti-Theft Vehicle System

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: DECISION ON
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: PETITION UNDER
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: 37 CFR 1.181
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This is in response to the "Petition Under 37 C.F.R. 1.181 to Withdraw the Holding of Abandonment" filed on 01 September 2000.

BACKGROUND

This international application was filed on 04 February 1998, and claimed a priority date of 07 February 1997. A Demand electing the United States was filed on 24 August 1998, which was prior to the elapse of 19 months from the international filing date. Accordingly, the thirty-month time period to pay the basic national fee in the United States expired as of midnight on 07 August 1999.

On 28 July 1999, applicants filed a Transmittal Letter accompanied by, *inter alia*, the basic national fee.

On 24 September 1999, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an executed oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge under 37 CFR 1.492(e). The Notification set an extendable period for response which ended on 24 October 1999.

On 25 April 2000, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants, indicating that this international application had become abandoned with respect to the United States for failure to timely comply with the requirements of the Notification of Missing Requirements.

Applicant filed the instant petition on 01 September 2000.

DISCUSSION

The petition indicates that the required reply to the Notification of Missing Requirements (including an executed declaration and the surcharge under 37 CFR 1.492(e)) were mailed via first-class mail to the USPTO on Monday, 25 October 1999. The petition is accompanied by, *inter alia*, copies of the executed declaration, a "Response" and a postcard receipt date stamped as received by the Office on "29 OCT 1999." The postcard receipt itemizes a "Response, Copy of Notification of Missing Requirements Under 35 U.S.C. 371, Declaration and Power of Attorney and check in the amount of \$130.00." The copy of the "Response" includes a signed Certificate of Mailing under 37 CFR 1.8.

Based on the postcard evidence of record, it would be appropriate to accept the Response, Notification of Missing Requirements and Declaration and Power of Attorney accompanying the petition as copies of the papers originally filed, and to consider the itemized \$130.00 surcharge to have been received on the same date. In view of the certificate of mailing appearing on the correspondence, it would be appropriate to consider the papers and surcharge to have been filed on 25 October 1999. Since the period for reply to the Notification of Missing Parts ended on Sunday, 24 October 1999, the papers and surcharge were timely filed, pursuant to 35 U.S.C. 21 and 37 CFR 1.7. Therefore, the Notification of Abandonment mailed on 25 April 2000 was in error and is hereby **withdrawn**.

DECISION

The petition under 37 CFR 1.181 is **GRANTED**.

Counsel's Deposit Account No. 02-2712 is being credited in the amount of \$1080.00 as a refund of an unnecessary partial payment of a petition fee under 37 CFR 1.137(b). (fee code 141).

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for continued processing, including the preparation and mailing of a Notification of Acceptance (Form PCT/DO/EO/903). The 35 USC 102(e) and 35 USC 371 date of this application is **25 October 1999**.



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